

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Marc I LLC)	Shelby County
Property ID: 058141 00007)	
)	
Tax Years 2013 and 2014)	Appeal No. 91024

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$11,100	\$66,500	\$77,600	\$19,400

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 30, 2014, in Memphis, Tennessee. The taxpayer was represented by Jerry Sanders, a registered agent employed by Evans Petree PC, the law firm representing the taxpayer in this appeal. Mr. Sanders was assisted by Richard Hunt, a registered agent also employed by the same law firm. Also in attendance at the hearing were Ray Bergin, the property owner, Andrew H. Raines, a partner in the law firm representing the taxpayer, Phyllis Hall, an employee of the law firm, John Zelinka, counsel for the Assessor of Property, and staff appraiser Mary Royko. As a preliminary matter, the taxpayer amended the appeal, without objection, to include tax year 2014.¹

¹ Since this appeal concerns tax year 2013 the relevant assessment date is January 1, 2013. See Tenn. Code Ann. § 67-5-504(a). The value established as of that date will simply be carried forward for tax year 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 0.28 acre lot improved with a single family residence located at 4343 Rhodes Ave. in Memphis. The home was constructed in the 1950's and contains 1,661 square feet of gross living area.² Mr. Bergen testified that he purchased subject property from the VA or a bank in September of 2009 for \$32,000 or \$34,000 and utilizes the home for rental purposes. According to Mr. Bergen, he purchased the property through Tate Realty which contacts investors that might possibly be interested in the property.

The taxpayer contended that subject property should be valued at \$49,800. In support of this position, the taxpayer first offered into evidence the testimony of Ray Bergin, the property owner. Mr. Bergin testified that he is a CPA and has been investing in real estate since 2007. He stated that he owns a total of 24 rental houses. Mr. Bergin maintained that investors constitute the market for these type homes because the typical owner occupant lacks the necessary down payment or cannot qualify for a mortgage.

Mr. Bergin testified that subject property is in "good" condition, but has experienced vandalism such as a stolen HVAC unit. He estimated subject property has a market value of approximately \$50,000 based upon (1) the lack of potential buyers; (2) market conditions; and (3) the amount of crime in the neighborhood and surrounding area.

The next witness to testify was Richard Hunt. Essentially, Mr. Hunt prepared a sales comparison approach in which he analyzed a total of four comparable sales. He maintained that the comparable sales support a value of \$30.00 per square foot or \$49,800 after adjustments. Mr. Hunt testified, in substance, that it was appropriate in this case to utilize two HUD sales and one bank sale because such sales constitute the market.

² The taxpayer's exhibit indicates the home was constructed in 1956. The assessor's exhibit reflects a construction date of 1954. The administrative judge finds it unnecessary to resolve this minor discrepancy and, in any event, could not do so without additional evidence.

The assessor contended that subject property should be valued at \$68,000. In support of this position, the testimony and written analysis of Mary Royko was offered into evidence. Ms. Royko testified that she is both a Certified Residential Appraiser and real estate agent with approximately 29 years' experience. She has been employed by the assessor's office for approximately four years.

Like Mr. Hunt, Ms. Royko also prepared a traditional sales comparison approach in arriving at her opinion of value. Ms. Royko testified that she reviewed all the sales in the neighborhood and utilized the "mid-line" sales in arriving at her concluded value of \$68,000.³ Ms. Royko did not agree with Messrs. Bergen and Hunt that the only potential buyers of homes in the neighborhood are investors.

Counsel for the assessor argued, in substance, that no weight should be given to the testimony and/or analyses of Messrs. Bergen and Hunt as neither qualifies as an expert. Moreover, Mr. Zelinka maintained that Mr. Hunt's testimony and analysis should receive no weight for the same reasons the undersigned administrative judge previously rejected the testimony of another agent employed by the same law firm in *Nashwood Park Limited Partnership, et al.* (Davidson County, Tax Year 2007).⁴ In that case, the administrative judge stated in relevant part as follows:

In summary, the administrative judge finds that Mr. Musgrave's testimony and analyses lack probative value insofar as these particular appeals are concerned for three reasons. First, Mr. Musgrave's credibility is adversely affected to a significant degree by virtue of the fact that he is employed by the law firm representing the taxpayers and the firm has a contingent fee arrangement. Second, Mr. Musgrave is not an appraiser and lacks the training and expertise necessary to appraise the subject properties. Third,

³ Ms. Royko conceded on cross-examination that her grid had a mathematical error. However, she asserted that it would not change her conclusion of value because the corrected indication of value for sale #3 was still \$68,300.

⁴ It is the administrative judge's understanding that this decision was appealed to the Assessment Appeals Commission and settled on the issue of value. Apparently, the Commission simply adopted the agreed values without addressing the ruling under appeal.

the assessor's cross-examination of Mr. Musgrave established several deficiencies in his analyses from an appraisal standpoint.

Initial Decision and Order Granting Assessor's Motion for Directed Verdict at 7.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$68,000. As will be discussed below, the administrative judge finds that the taxpayer did not carry the burden of proof. Normally, the administrative judge simply affirms the ruling of the county board in such situations because of the presumption of correctness attaching to the ruling of that tribunal. In this case, however, Ms. Royko's analysis established the upper limit of value.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds it unnecessary to determine whether Mr. Bergen truly qualifies as an expert with respect to the valuation of real property. Even if it is assumed *arguendo* that Mr. Bergen qualifies as such an expert, he must still substantiate his opinion of value like any other expert. Respectfully, Mr. Bergen offered no comparable sales or "concrete" evidence to support his contention of value. As noted above, he simply testified that his opinion was based upon (1) the lack of potential buyers; (2) market conditions; and (3) the amount of crime in the neighborhood and surrounding area. Respectfully, although these are certainly

relevant factors to consider, they were in no way quantified. Presumably, Mr. Bergen's contented value of approximately \$50,000 was based upon Mr. Hunt's analysis. It simply strains credulity to believe that Messrs. Hunt and Bergen independently arrived at the same conclusion of value when the latter did not cite a single comparable sale as the basis for his opinion of value.

This appeal constitutes the third time in September that the law firm of Evans Petree PC and the Shelby County Assessor of Property have appeared before the administrative judge with respect to the valuation of rental houses. In each proceeding, Mr. Zelinka has challenged Mr. Hunt's credibility. The first of the three proceedings is styled as *Aspasia Zambelis* (Shelby County, Tax Years 2013 and 2014) ["*Zambelis*"]. The administrative judge's ruling in that appeal has been appended to this Order and is hereby incorporated by reference in relevant part. For the reasons stated therein, the administrative judge finds that Mr. Hunt's sales comparison approach lacks probative value and cannot provide a basis of valuation.

The administrative judge finds that Mr. Hunt's lack of appraisal expertise was even more convincingly demonstrated in the second proceeding wherein the administrative judge ruled in relevant part as follows:

Respectfully, the administrative judge finds that the deficiencies in Mr. Hunt's analyses were even more pronounced than in *Zambelis*. In most cases, Mr. Hunt has not even seen the subject properties or comparable sales he utilized in his analysis. Viewed most charitably, Mr. Hunt testified that he drove around the neighborhoods and saw some of the properties in question while in his car. The administrative judge finds that Mr. Hunt's lack of familiarity with the subject and comparable properties not only reduces his credibility, but in certain instances materially affected his adjustments. For example, with respect to Appeal No. 90841, Mr. Hunt's adjustment grid assumed the subject had "forced air." In fact, Mr. Moore's testimony and the photograph contained in his appraisal report established that the dwelling has central air conditioning. Similarly, with respect to Appeal No. 90839, Mr. Hunt did not realize the home has a fireplace despite the chimney. He also erroneously assumed the home has a detached garage. Mr. Moore's adjustment grid, in contrast, accurately reflected the physical characteristics of the home.

Unfortunately, the cross-examination of Mr. Hunt revealed numerous other deficiencies in his analyses. For example, he did not actually verify the sales. This could possibly explain why he was unaware that in several instances the same homes utilized as comparable sales in his analyses sold the same day or shortly thereafter for significantly higher prices. For example, in Appeal No. 90841, Mr. Hunt's comparable sale #4 sold for \$11,500 on December 12, 2012. Yet, the assessor established that the property also sold that very same day for \$39,000. Similarly, in Appeal No. 90925, Mr. Hunt's adjustment grid indicated that sales #2 and #3 sold for \$10,000 and \$11,000 respectively. Yet, the assessor offered proof indicating that sale #2 sold the same day for \$37,500 and sale #3 sold twenty-six days later for \$33,000.

The administrative judge also adopts the assessor's argument that lump-sum adjustments are preferable to percentage adjustments when it comes to physical characteristics such as bathrooms and garages. Presumably, the contributory value of those features would be the same from one home to another home in the same neighborhood. By utilizing percentage adjustments, Mr. Hunt implicitly assumed that the contributory value of a bathroom, for example, varies with the sale price despite the narrow range of sales prices.

Given the foregoing, the administrative judge finds it unnecessary to discuss the other deficiencies in Mr. Hunt's analyses. The administrative judge finds the foregoing sufficient to conclude that Mr. Hunt's analyses have no probative value.

Sy Training Center Inc. and California ["*Sy Training Center*"] (Shelby County, Tax Years 2013 and 2014); Initial Decision and Order at 5-6.

As noted above, Messrs. Bergen and Hunt maintained that the only market for homes in the subject neighborhood are investors. Yet, no statistical data was entered into evidence by either witness to support such an assertion. Interestingly, the same assertion was made in *Sy Training Center*. In that proceeding, the assessor's primary witness entered into evidence statistical data convincingly establishing that a significant percentage of homes in the neighborhoods at issue were, in fact, owner occupied. Absent similar evidence from the taxpayer, the administrative judge must conclude that insufficient proof was offered to substantiate this contention.

Based upon the foregoing, the administrative judge finds that the taxpayer failed to carry the burden of proof and the assessor could have moved for a directed verdict/involuntary dismissal. The administrative judge adopts the assessor's contention of value insofar as it established the upper limit of value.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2013 and 2014:


<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$11,100	\$56,900	\$68,000	\$17,000

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 10th day of October 2014.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

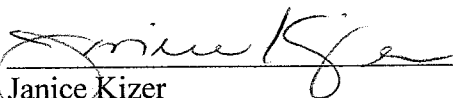
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Jerry B. Sanders
Richard Hunt
Evans Petree PC
1000 Ridgeway Loop, Suite 200
Memphis, Tennessee 38120

Tameaka Stanton-Riley
Shelby Co. Property Assessor's Office
Appeals Department
1075 Mullins Station Road
Memphis, Tennessee 38134

This the 10th day of October 2014.



Janice Kizer
Tennessee Department of State
Administrative Procedures Division

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Aspasia Zambelis)	Shelby County
	Property ID: 041024 00010)	
)	
	Tax Years 2013 and 2014)	Appeal No. 90822

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$17,000	\$81,100	\$98,100	\$24,525

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 9, 2014, in Memphis, Tennessee. The taxpayer was represented by Jerry Sanders, a registered agent employed by Evans Petree PC, the law firm representing the taxpayer in this appeal. Mr. Sanders was assisted by Richard Hunt, a registered agent also employed by the same law firm. Also in attendance at the hearing were Kathy Zambelis, the property owner, Andrew H. Raines, a partner in the law firm representing the taxpayer, Phyllis Hall, an employee of the law firm, John Zelinka, counsel for the Assessor of Property, and staff appraisers Charles Blow and Neil O'Donnell. As a preliminary matter, the taxpayer amended the appeal, without objection, to include tax year 2014.¹

¹ Since this appeal concerns tax year 2013 the relevant assessment date is January 1, 2013. See Tenn. Code Ann. § 67-5-504(a). The value established as of that date will simply be carried forward for tax year 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 0.34 acre lot improved with a single family residence constructed in 1950 containing 2,268 square feet of living area. Subject property is located at 987 North Idlewild in Memphis.

The taxpayer contended that subject property should be valued at a maximum of approximately \$65,000. In support of this position, the taxpayer first offered the testimony of Kathy Zambelis, the property owner as well as a real estate agent and property manager for over twenty years.

Ms. Zambelis testified that subject property had been her mother-in-law's property until she passed and her husband inherited the property. According to Ms. Zambelis, subject property has not been occupied since 2008, but she and her husband have been maintaining the property. Notwithstanding the fact they have been maintaining the property, Ms. Zambelis asserted that it has been losing value for several reasons. First, Ms. Zambelis testified that the neighborhood has been in decline as evidenced by the number of burglaries. Second, Ms. Zambelis stated that the neighborhood is transitioning into one dominated by rentals. Third, most recent sales in the neighborhood have been to investors and many of those sales have been for less than \$50,000. Fourth, Ms. Zambelis claimed the home suffers a loss in value due to its physical condition.

With respect to the condition of the home, Ms. Zambelis noted that there is a ceiling crack in the entryway. Moreover, Ms. Zambelis testified that the roof is "not in great shape." Finally, Ms. Zambelis stated that the HVAC system broke down in August of 2014.

Based upon the foregoing, Ms. Zambelis concluded that subject property would have to be sold to an investor. In her opinion, she would be fortunate to sell subject property for \$65,000.

The next witness to testify was Jerry Sanders. In certain instances his testimony was supplemented by that of Richard Hunt. For ease of understanding, the administrative judge will simply refer to their testimony collectively without specifying which witness made a particular statement.

Messrs. Sanders and Hunt offered into evidence as exhibit #1 a sales comparison approach. Essentially, the agents analyzed four comparable sales which they maintained support a value indication of \$29.00 per square foot or \$65,772. Primary weight was placed on comparable sale #2. The remaining sales were all purchased by investors. Nonetheless, the representatives maintained that it is appropriate to use investor sales in this particular appeal because such sales basically constitute the market for homes in the subject neighborhood.

The assessor contended that subject property should remain valued at \$98,100. In support of this position, the testimony and written analysis of staff appraiser Neil O'Donnell was offered into evidence. Basically, this witness also prepared a sales comparison approach. Mr. O'Donnell analyzed a total of four sales, three of which occurred in 2011 and one in 2012. He concluded that the comparable sales support a market value indication of \$98,500. Mr. O'Donnell testified on cross-examination that he utilized three sales from 2011 due to the lack of sales in 2012 not involving banks. He estimated that approximately 50% of the sales in the relevant area involve banks.

Mr. O'Donnell also testified concerning why he believed that the sales relied on by Messrs. Sanders and Hunt lack probative value. First, at least three of the sales involved lenders and presumably included some element of duress. Second, comparable sale #2 is a duplex. Mr. O'Donnell argued, in substance, that it is simply inappropriate as a generally accepted appraisal practice to utilize the sale of a commercial duplex to value a single family residence.

Third, Mr. O'Donnell entered into evidence as exhibit #2 a print-out from a website indicating that taxpayer comparable sale #1 was an "approved short sale!"

As part of his cross-examination of Mr. Sanders, counsel for the assessor elicited the fact the law firm representing the taxpayer has a contingent fee arrangement and that Messrs. Sanders and Hunt are employees of the law firm. Mr. Zelinka, argued, in substance, that Messrs. Sanders and Hunt are simply not credible witnesses.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$98,100 based upon the presumption of correctness attaching to the ruling of the Shelby County Board of Equalization.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the administrative judge finds that Ms. Zambelis' testimony was insufficient to establish the market value of subject property. Although Ms. Zambelis has significant experience as a realtor and property manager, she did not prepare a comparative market analysis or the like. Moreover, her testimony regarding comparable sales was exceedingly general in nature and the "comparable sales" she referenced cannot meaningfully be compared with the subject property absent additional proof and analysis. Finally, it appears that

all of the sales referenced by Ms. Zambelis occurred long after January 1, 2013 and are simply irrelevant for tax year 2013. *See Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County – Tax Year 1989) wherein the Assessment Appeal Commission ruled that “[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events.” Final Decision and Order at 3.²

Respectfully, the administrative judge finds that Ms. Zambelis’ testimony concerning the condition of subject property does not allow one to conclude that subject property has been appraised in excess of its market value as of the relevant assessment date of January 1, 2013. With respect to the roof, Ms. Zambelis testified that she could not recall when it was last replaced. Absent additional evidence, it is unclear how she knows the roof is “not in great shape.” Moreover, one cannot begin to determine if an actual problem exists and the cost to cure any such problem. Similarly, the crack in the entryway could be cosmetic or structural in nature. Simply testifying there is a crack in the entryway does not allow one to determine the seriousness of the problem or any resulting loss in value. The administrative judge finds that any problems with the HVAC system in 2014 are simply irrelevant for tax year 2013. Moreover, even if the HVAC situation was theoretically relevant for tax year 2013, one would still have to introduce evidence establishing the actual problem and the cost to cure.

The administrative judge recognizes that increasing crime and conversion of owner-occupied homes to rentals can certainly reduce the value of properties in a neighborhood. Based upon the evidence, however, the administrative judge has no basis to determine the possible loss in value or the resulting market value of subject property. The administrative judge finds merely reciting factors that could cause a diminution in value does not establish the current appraisal

² It appears that all of the sales actually occurred after January 1, 2014 let alone January 1, 2013.

exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

The taxpayer also claimed that the land value set by the assessing authorities. . . was too high. In support of that position, she claimed that. . . the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

Turning to the testimony and written analysis of Messrs. Sanders and Hunt, the administrative judge must respectfully conclude that it lacks probative value. Ironically, this appeal constitutes at least the third time the administrative judge has found that a registered agent employed by the law firm or its predecessor lacks credibility when appearing as a witness on

behalf of a taxpayer represented by the law firm.³ The administrative judge finds it immaterial whether the agent appears alone or is called as a witness by the firm's attorney.

In *Music City Hotel, L.P.* (Davidson County, Tax Years 2002 & 2003), two lawyers from the law firm represented the taxpayer. The taxpayer's sole witness was an employee of the law firm who also happened to be an approved agent pursuant to Tenn. Code Ann. § 67-5-1514. The administrative judge gave no weight to the testimony and analysis of that agent stating in pertinent part as follows:

The administrative judge would initially note that Mr. Musgrave has appeared before him on many occasions as a registered agent. The administrative judge has always found Mr. Musgrave to be forthright and has no reservations whatsoever concerning his integrity or competence.

Notwithstanding the foregoing, the administrative judge finds that Mr. Musgrave simply lacks credibility in this particular appeal. This conclusion stems from the fact he is an employee of the law firm representing the taxpayer. The administrative judge finds that it would strain credulity to argue that Mr. Musgrave's compensation will not ultimately be affected by his success (or lack thereof) in such situations. The administrative judge finds Mr. Musgrave was effectively impeached due to bias and/or self-interest.

Initial Decision and Order at 2.

The administrative judge finds the lack of independence of the agents in this appeal was evident following Mr. Zelinka's cross-examination concerning the fact the agents are employees of the firm which has a contingent fee arrangement. Until this point, Mr. Raines was simply an observer. He interjected himself into the appeal, however, when he vehemently expressed his disdain for this line of questioning. Obviously, the law firm has a financial interest in having its employees function as the equivalent of independent experts. As will be discussed below, the administrative judge must also respectfully conclude that neither agent seemingly qualifies as an

³ The law firm presently known as Evans Petree PC was previously known as Stokes Bartholomew Evans & Petree PA.

appraisal expert given that there is nothing in the record concerning their having appraisal licenses or the like. As will also be discussed below, the administrative judge finds that an agent approved to represent taxpayers pursuant to Tenn. Code Ann. § 67-5-1514 does not qualify as an appraisal expert simply because he or she has the legal authority **to represent** a taxpayer before the State Board of Equalization. Indeed, the administrative judge has conducted many hearings over the years where an agent relies on the testimony and report of a bona fide expert such as a certified appraiser to assert a particular value on behalf of a taxpayer.

The administrative judge also finds instructive his ruling in *Nashwood Park Limited Partnership, et al.* (Davidson County, Tax Year 2007) ["Nashwood Park"].⁴ In that case, the administrative judge granted the assessor's Motion for Directed Verdict stating in relevant part as follows:

In summary, the administrative judge finds that Mr. Musgrave's testimony and analyses lack probative value insofar as these particular appeals are concerned for three reasons. First, Mr. Musgrave's credibility is adversely affected to a significant degree by virtue of the fact he is employed by the law firm representing the taxpayers and the firm has a contingent fee arrangement. Second, Mr. Musgrave is not an appraiser and lacks the training and expertise necessary to appraise the subject properties. Third, the assessor's cross-examination of Mr. Musgrave established several deficiencies in his analyses from an appraisal standpoint.

Initial Decision and Order Granting Assessor's Motion for Directed Verdict at 7. *See also Maytag Appliance Sales Co.* (Gibson County, Tax Year 2005) wherein Administrative Judge Pete Loesch stated as follows:

... Finally, without meaning to disparage Ms. Westbrook, the administrative judge cannot entirely ignore Deloitte's financial stake in the outcome of this appeal by virtue of its contingent fee arrangement.

Initial Decision and Order at 3.

⁴ It is the administrative judge's understanding that this decision was appealed to the Assessment Appeals Commission and settled on the issue of value. Apparently, the Commission simply adopted the agreed values without addressing the ruling under appeal.

Ironically, the administrative judge finds that the instant appeal requires more appraisal expertise than many commercial appeals wherein the only issue is a component of the income approach. As the administrative judge also stated in *Nashwood Park*:

The administrative judge finds that Tenn. Code Ann. § 67-5-1514 authorizes registered agents to represent a party in proceedings before the State Board of Equalization. However, as the administrative judge noted in *Flowers Baking Co. of Chattanooga, Tennessee* (Cumberland Co., Tax Year 2007), 'although registered agents have the right to represent taxpayers, they do not necessarily qualify as experts.' Initial Decision and Order at 2.

* * *

The administrative judge finds that many appeals before the State Board of Equalization do not require the introduction of full-blown appraisal reports or the testimony of licensed appraisers. [Footnote omitted] For example, in many appeals involving income-producing properties, the only issue may concern a single component of the income approach such as operating expenses. The administrative judge finds that virtually all registered agents are competent to reconstruct a taxpayer's operating statements and compile market data from surveys and the like.

The administrative judge finds that many appeals before the State Board of Equalization do, in fact, require the testimony and analysis of bona fide experts. . .

Initial Decision and Order at 3-4.

Respectfully, the administrative judge finds that the firm's sales comparison approach lacks probative value for any of several reasons. Most importantly, the agents placed primary weight on the sale of a commercial duplex to value a single family residence. Respectfully, the administrative judge has been conducting hearings for the State Board of Equalization for approximately thirty years and does not recall an actual appraiser ever utilizing the sale of a duplex to value a single family residence.⁵ Not surprisingly, no legal or appraisal authority was cited to support this seemingly dubious comparable sale. Additionally, although internet sites certainly contain erroneous information, exhibit #2 suggests that taxpayer sale #1 was a short

⁵ The administrative judge has had appraisers utilize sales of duplexes as part of their basis for developing a gross rent multiplier.

sale. Presumably, the taxpayer's representatives need to at least verify the sale to determine whether it was, in fact, a short sale. Given that sale #1 was possibly a short sale, sale #2 involved a duplex, and sales #3 and #4 were investor sales, the administrative judge must conclude that the law firm's sales comparison approach lacks probative value irrespective of the fact that Messrs. Sanders and Hunt are employees of the firm.⁶

Based upon the foregoing, the administrative judge finds that the taxpayer failed to carry the burden of proof and the assessor could have moved for a directed verdict/involuntary dismissal. Accordingly, the administrative judge finds it unnecessary to address the assessor's proof. The administrative judge simply affirms the present appraisal based upon the presumption of correctness attaching to the ruling of the Shelby County Board of Equalization.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2013 and 2014:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$17,000	\$81,100	\$98,100	\$24,525

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of


⁶ The taxpayer's representatives offered no meaningful proof to support the conclusion that investors constitute the only potential buyers of homes in the neighborhood.

the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 10th day of October 2014.



MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

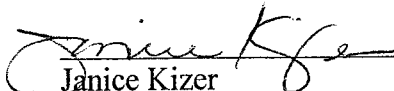
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Andrew H. Raines, Esq.
Evans Petree PC
1000 Ridgeway Loop, Suite 200
Memphis, Tennessee 38120

Tameaka Stanton-Riley
Shelby Co. Property Assessor's Office
Appeals Department
1075 Mullins Station Road
Memphis, Tennessee 38134

This the 10th day of October 2014.



Janice Kizer
Tennessee Department of State
Administrative Procedures Division